IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1164 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DUTIYA KAGDA RATHAVA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 1164 of 1994

MR BS SUPEHIA for the appellant

MR DP JOSHI, APP for the Respondent

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 07/11/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE AKSHAY H.MEHTA)

By this appeal under section 374 of the Code of Criminal Procedure,1973, the appellant has sought to challenge the judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, Baroda, Camp at Chhotaudepur, in Sessions Case No. 56/93, dated 25th November, 1994. Vide said judgment, the appellant has been convicted for the offences made punishable under section 302 of I.P.C. and also under sections 324 & 436 of I.P.C. and section 135 of the Bombay Police Act and he has been sentenced to suffer imprisonment for life for offence under section 302 of the Indian Penal Code. However, no separate sentences have been passed on account of conviction under sections 324 & 436 of I.P.C. and section 135 of the Bombay Police Act.

2. The case of the prosecution is that one Jaliyabhai Jiniyabhai Rathva was staying with his family at village Alsipura. His family consisted of his wife Shobhaliben, daughter named Ramtiben, his son-in-law Namla Chuniya and his son Navalsinh. He had aged mother named Ditliben, who was also staying with him. On 23rd February, 1993 at about 7.00 P.M., nephew of Jaliyabhai Jiniyabhai i.e. the present appellant went to the house of Jaliyabhai and he told Jaliyabhai why he was not giving his (appellant's) share in the yard and so saying, he assaulted Jaliyabhai with Paliya i.e. a weapon having curved sickle like blade with short wooden handle. He caused injuries to Jaliyabhai on his back as well as calf muscle just below the knee of left leg. Jaliyabhai therefore,ran away and concealed himself in the field. Thereafter the appellant brought bunch of dry stems of Palmyra palm tree and lit them with a view to set the house of Jaliyabhai on fire and he actually set the house on fire. The son-in-law of Jaliyabhai i.e. Namla Chuniya was present at the place and he tried to intervene with a view to prevent the appellant from doing so. The appellant, therefore, wielded a blow with a view to cause injury to Namlabhai. As Namlabhai ducked and avoided the blow by sitting down, no injury was caused to him. Namla Chuniya, Shobhaliben and Ramtiben got scared on being assaulted by the appellant and they ran away from the place and hid themselves in the field situated opposite to the house of Jaliyabhai, at some distance. The appellant even after setting fire to the house,did not leave the place and he kept on threatening the persons gathered there that if any one tried to interfere, he would cut him with his Paliya. At the time when the house was set on fire, the aged mother of

Jaliyabhai was inside the house and because of the threat given by the appellant, no one went to save her.In the meanwhile, someone from the crowd arranged to call for the fire-brigade from Chhotaudepur. On arrival of the fire brigade, fire was extinguished, but by that time, the entire house together with household articles, grains etc. was completely destroyed. In the early morning, Jaliyabhai and other started to assess the damage caused to the house and at about 7.00 A.M., completely charred body of Bai Ditli i.e. mother of Jaliyabhai was found. According to the prosecution, during the time when the house was set on fire and when the crowd had collected, the appellant had left the place. The motive for the assault and the subsequent setting the house on fire was that the appellant felt that Bai Ditli and Jaliyabhai were not giving him his share in the yard. On account of this grievance, the appellant had quarrelled with Bai Ditli on that very day sometime prior to the present incident.

Jaliyabhai thereafter on the following day i.e. on 24th February, 1993 approached Chhotaudepur Police Station and lodged complaint at about 8.15 A.M. On receipt of this complaint, the police commenced usual investigation and in the course of the same, recorded statements of various persons who were conversant with the facts of the case, drew inquest panchnama and other necessary panchnamas including that of scene of offence, arrested the appellant, arranged for the postmortem examination of dead body of Bai Ditli, got injured persons treated by the medical officer etc. and at the end of the same, submitted chargesheet in the Court of learned J.M.F.C. Chhotaudepur.The learned Magistrate in turn committed the case to the Court of Sessions, as the offences punishable under sections 302 & 436 of the Indian Penal Code are exclusively triable by the Court of Sessions.

3. At the trial,the learned Additional Sessions Judge, Baroda,Camp at Chhotaudepur, framed charge at Exh.3 for the aforesaid offences, to which the appellant pleaded not guilty and claimed to be tried.

In support of its case, the prosecution examined; (1) Jaliyabhai Jiniyabhai Rathva, PW.1 Exh.9, (2) Dr. Rajendrakumar Rasiklal Upadhyaya,PW.2 Exh.12, (3) Shobhaliben Jaliyabhai,PW.3 Exh.20, (4) Ramtiben Namlabhai PW.4 Exh.21, (5) Dr.Naliniben Jashraj PW.5 Exh.23, (6) Namlabhai Chuniyabhai, PW.6 Exh.28, (7) Virendraprasad Gangashanker Joshi, PW.7 Exh.29, (8) Bhikhabhai Gandabhai Rathva, PW.8 Exh.32, (9) Shaliyabhai

Bhailabhai Rathva, PW.9 Exh.33, (10) Jasla Maniya Rathva PW.10 Exh.36,and (11) Jivabhai Hirabhai Parmar, PW.11, Exh.39. Over and above this, the prosecution also relied on certain documentary evidence, such as, complaint dated 24.2.1993 at Exh.10, map of scene of offence at Exh.31, inquest panchnama at Exh.34, notes of postmortem examination at Exh.13, medical certificates of Jaliyabhai Jiniyabhai at Exhs. 15 & 24, medical certificates of Dutiyabhai Kagdabhai i.e. the present appellant at Exhs.19 & 27 etc. to prove its case against the appellant. At the end of recording of the evidence, the learned Judge under section 313 of Cr.P.C. put to the appellant all the circumstances appearing against him in the evidence with a view to enable him to submit his explanation thereto, if he so desired. However, he did not come out with any specific case, but he stated that evidence of the prosecution witnesses given before the Court was false. At the end of his statement, he only stated that his uncle Jaliyabhai had caused him injuries with paliya and as a result of that, he was lying in ravines and that he was innocent.

4. At the end of the trial, the learned Additional Sessions Judge came to the conclusion that the prosecution had proved that on 23.2.1993 at 7.00 P.M. the appellant had caused injuries to the complainant on his back as well as on the calf muscle below left knee by means of Paliya and thereby he had committed an offence under section 324 I.P.C. So far as the assafsult on Namlabhai by the appellant with a view to committing his murder was concerned, the learned Judge has come to the conclusion that the prosecution had failed to establish the same. The learned Judge has further held that the prosecution was able to prove that the appellant had set fire to the house of Jaliyabhai knowing fully well that Bai Ditli was inside the house and as a result of fire, Bai Ditli had sustained fatal injuries which were sufficient in the ordinary course of nature to cause her death and thereby the appellant has committed offence made punishable under section 302 I.P.C. The learned Judge has also come to the conclusion that the prosecution has duly established that the appellant had set fire to the dwelling house of complainant Jaliyabhai and on account of the same, Jaliyabhai had suffered damage to the extent of Rs. 47,000/- and thereby the appellant has committed offence punishable under section 436 of the Indian Penal Code.

5. We have heard Mr. B.S.Supehia, learned counsel for the appellant and Mr. D.P.Joshi, learned A.P.P. for the State.

6. Mr. Supehia has submitted before us that the judgment and order of conviction passed by the learned Trial Judge are erroneous, inasmuch as the prosecution has failed to prove its case beyond any reasonable doubt and the appellant ought to have been acquitted by giving him benefit of doubt. He has further submitted that since the appellant himself had sustained injuries which were quite serious in nature, he might have assaulted complainant Jaliyabhai while exercising the right of private defence. In the alternative, he has submitted that the assault on Jaliyabhai and all other subsequent overtacts committed by the appellant might have been by way of retaliation to the assault made on him by the complainant and the appellant might have acted under grave and sudden provocation. He has further submitted that though the appellant had suffered serious injuries, the prosecution witnesses had failed to explain the same and, therefore, the case of the prosecution should fail on that sole ground. He has also submitted that so far as offence under section 302 I.P.C. is concerned, there is no evidence on record of the case to show that at the time of incident the appellant knew that Bai Ditli was inside the house and with a view to see that she was done to death, he had set fire to the house.

7. As against the submissions made by the learned counsel for the appellant, Mr. Joshi, learned A.P.P. has submitted that the prosecution by leading cogent and reliable evidence has proved beyond reasonable doubt that the appellant on the relevant day had picked-up a quarrel with complainant Jaliyabhai on the ground that he was being deprived of his share in the yard and had caused him injuries by means of a paliya. He has further submitted that the appellant had subsequently set fire to the house of Jaliyabhai knowing fully well that Bai Ditli was inside the house and that she would die on account of fire. He has further submitted that with a view to accomplishing his act, he had prevented the prosecution witnesses and other persons from rescuing the old lady by wielding his paliya and threatening that if anybody would try to interfere, he would cut him into pieces. He has also submitted that Bai Ditli died on account of receiving serious burn injuries. He has further submitted that the prosecution has adequately proved that the complainant in the fire has lost not only the house, but also his household articles and grains worth Rs.47,000/-. Lastly, he has submitted that even if the appellant had suffered any injuries, that fact would not adversely affect the case of the prosecution.

8. With a view to consider the rival contentions, we will appreciate the evidence led by the prosecution, oral well as documentary, in support of its case afresh. At first instance, we will discuss the evidence of eye witnesses to the incident.

9. The first witness examined by the prosecution at the trial is Jaliyabhai Jiniyabhai Rathva, PW.1 Exh.9. He is also complainant of this case. This witness has stated that he was staying with his family comprising his wife Shobhaliben, his aged mother Bai Ditli, his daughter Ramtiben, his son-in-law Namlabhai and son Navalsinh at village Alsipura and he was doing agricultural as well as labour work. He had a brother named Kagdabhai, who had two sons named Dutiya and Thodar. He has further stated that he had one son who was murdered by Dutiya i.e. the present appellant, but the appellant was acquitted in that case. With regard to the actual incident, this witness has stated that the same had occurred at about 6.00 to 7.00 P.M.in the compound of his house. On that day, the appellant had been to his house with paliya and without saying anything, he gave blows on the back as well as left leg of the witness. On receiving the blows, the witness got scared and he ran away and hid himself in a field. This witness has further stated that at that time his son-in-law Navlabhai, daughter Ramtiben and wife Shobhaliben were also present. His mother Ditliben was inside the house. The appellant thereafter brought dry stems of palm tree and lit them and with the aid of such stems, he set the house of the complainant on fire. He has further stated that on account of fire, there was a great commotion. His son-in-law, daughter and wife also ran away at that time and concealed themselves in the field. According to Jaliyabhai, he did not make any attempt to extinguish the fire because the appellant was shouting that he would cut them with Paliya. He has further stated that when the village people arrived, the appellant left the place and somebody from the crowd arranged to call fire-brigade and on its arrival, fire brigade extinguished the fire. In the morning when he started to assess damage at about 7.00 A.M. next day, the dead body of his mother was found. He thereafter lodged the complaint with P.S.I. attached to Chhotaudepur Police Station at Joj Outpost in connection with this incident. He was sent by police with police yadi to the medical officer for treatment of the injuries sustained by him in the incident. In cross-examination by the defence, this witness has admitted that he was arrested by the police in connection with the complaint lodged by the appellant against him. He has however, denied the suggestion that when the incident occurred,

the appellant was lying in injured condition in ravine. He has further stated that he didnot know whether police had found the appellant from the ravine in unconscious condition and that he was taken to the Hospital by the police for treatment. He has further stated that at Joj Hospital he had not seen the appellant. He has also denied the suggestion that after injuries were caused to him, he had run away from the place and so also his wife and daughter had run away. He has further denied that his mother Ditlibai was unable to move about on account of old age and he has also denied the suggestion that Bai Ditli had no dispute with the appellant on account of backyard of the house. He has also denied the suggestion that no altercation had taken place between Bai Ditli and the appellant just prior to the present incident and on the contrary, he has stated that he was very much present when such altercation between the appellant and Bai Ditli took place. According to this witness, after this altercation, the appellant had run away, but he denied the suggestion of the defence that the appellant thereafter did not come back. In response to the specific question put to him whether the appellant had any reason to commit murder of Bai Ditli, this witness has stated that there was a reason for which the appellant had committed murder of Bai Ditli and he has further stated that the backyard of the house was in his possession. He has also denied the suggestion that a false case had been filed against the appellant.

10. The prosecution has thereafter examined Shobhaliben Jaliyabhai, PW.3 Exh.20. This witness has stated that the incident took place at about 7.00 P.M. The appellant on that day caused injuries to her husband on his back as well as on the left knee. The appellant thereafter set the house on fire and this witness and her daughter ran away from there and hid themselves in the field. She has further stated that even after setting the house on fire, the appellant was moving about with a paliya in his hand and, therefore, nobody could go to save Bai Ditli who was already inside the house while the house was set on fire. In the meanwhile, somebody called for fire brigade and on its arrival, fire brigade extinguished the fire, by the time it was morning. In the morning, she found that in the 3rd room of the house Bai Ditli was lying in dead condition. She has further stated that in connection with this incident, her husband lodged complaint with police and the police sent him for medical treatment to the hospital where he was required to stay over night. She has stated that the appellant had enmity with her husband on account of the dispute regarding share in the yard and as a result of this

enmity, the appellant had caused injuries to her husband and had destroyed the house and household articles by setting fire to the house. In the cross-examination, this witness has stated that the appellant had been to their house at about 5.00 P.M. She has however denied that the appellant had thereafter left the place,but she has stated that after the appellant came there, her husband had run away to the field. She has further stated that her mother-in-law was given separate share by her husband as well as her brother-in-law Kagdabhai for her maintenance. She has further stated in the cross-examination that the family land was already partitioned and the respective shares were given to her husband as well as her brother-in-law Kagdabhai. In similar way, the respective shares in the house were also given to two brothers, namely, her husband and her brother-in-law Kagdabhai. The partition had taken place about 10 to 15 years back. She has denied the suggestion put by the defence that she did not know who had set the house on fire and that the appellant had not committed any overtact.

The next witness examined by the prosecution on this aspect is Ramtiben Namlabhai, PW.4 Exh.21. She has also stated that on the day of incident, the appellant had come to their house with a paliya and caused injuries to her father on his back and leg. The appellant had thereafter set the house on fire and at that time her grand mother Bai Ditli was inside the house. She has also stated that because the appellant at that time was moving about with palia, nobody could go to rescue Bai Ditli. In the morning,she saw dead body of her grand mother completely in burnt condition. In the cross-examination, she has denied the suggestion put by the defence that complainant Jaliyabhai was armed with paliya and he had caused injuries to the appellant and, therefore, the appellant had snatched away paliya from her father. No material of any significance has been elicited by the defence from the cross examination of this witness.

The prosecution has thereafter examined Namlabhai Chuniyabhai, PW.6 Exh.28, who happens to be the son-in-law of complainant Jaliyabhai. In the examination-in-chief he has deposed more or less on the line of the earlier witnesses. He has further stated that when the appellant set the house of the complainant on fire, he asked the appellant not to do so and, therefore, the appellant assaulted him with paliya, but he dodged the blow by sitting down and, therefore, no injury was caused to him. He had thereafter run away

with his wife and mother-in-law and concealed himself in the field along with them. In the morning, the dead body of Bai Ditli was retrieved from debris. He could notice extensive burns on the dead body of Bai Ditli. In the cross-examination, he has denied the suggestion put to him by the defence that his father-in-law Jaliyabhai had caused injuries to the appellant on his head as well as on the back with paliya and as a result of those injuries, the appellant was bleeding profusely. He has also denied the suggestion that the appellant had thereafter snatched away paliya from Jaliyabhai and thereafter all had run away to the field. He has further denied the suggestion that he could not see that who had set the house on fire from the place where they were hiding themselves.

The last witness on this point is Bhikhabhai Gandabhai, PW.8 Exh.32. In the examination-in-chief he has stated that the incident took place at about 7.30 P.M. and at that time he was going to his well. Near Jaliyabhai's house, he saw the appellant having a paliya with him and he was shouting loudly that the old lady was not giving him share in the yard and, therefore, he would cut the old lady. He also saw that the appellant had caused injuries to Jaliyabhai on the back side of his knee. In the early morning, fire brigade had arrived at the place and it had extinguished the fire and the dead body of the old lady was found in burnt condition. In the cross-examination by the defence,this witness has stated that his statement was recorded by the police. He admitted that he had not stated before the police that the appellant was shouting that he would cut the old lady into pieces, but he denied the suggestion that he had not seen Jaliyabhai beaten by the appellant. He has further stated that he had not seen the appellant having been recovered from the ravine in an unconscious condition next day. He has further denied the suggestion that it was the complainant, who had caused injuries to the appellant.

11. Considering the evidence of these eye witnesses, it becomes clear that on the date of incident the appellant went to the house of the complainant with paliya and on reaching the house, he immediately assaulted the complainant and caused him injuries on the back as well as on the left leg just below the knee on the back side. It also becomes clear that the appellant did not rest satisfied with the injuries caused to the complainant. He with a view to see that not only the house of the complainant was destroyed completely, but even the old lady Bai Ditli was done to death, caused

fire to the house from all sides and prevented anybody from going to the rescue of the old lady. This version of the prosecution witnesses has not been shaken by the defence during their cross-examination. In fact, in the cross-examination of the complainant it has come out that the appellant had real grudge against Bai Ditli and he had all the reason to see that she was done to death and with this precise intention, even after assaulting the complainant, he set the house on fire. We are, therefore, of the opinion that the prosecution had adequately proved that the appellant on the day of the incident had not only caused injuries to the complainant, but had, with an intention of causing murder of Bai Ditli, set the house on fire fully knowing that she was inside the house and by his act, in all probability, she would lose her life.

12. So far as medical evidence is concerned, the prosecution has brought the same on record with a view to establish that the complainant had suffered injuries on his person and that Bai Ditli had died a homicidal death. We may, therefore, first deal with the evidence of Dr. Rajendrakumar R. Upadyaya, PW.2 Exh.12, who had performed the postmortem of Bai Ditli by going to the place of the incident, since the body was not in a condition for being brought to the hospital. On examination, this witness has noticed that the hair as well as most of the portion of the skull were burnt and only few bones could be seen in place of this skull. No internal portion of the skull i.e. brain was found. The thorax cavity and the ribs as well as muscles were found in half burnt condition. On examination, lungs were found to be in burnt lump condition. Abdomen and internal wall of the abdomen were found in half burnt condition, whereas most of the intenstines and most of the stomach were found in burnt condition. In the spinal cord, thorax as well as cervical region were half burnt and in the opinion of this witness, the death was caused due to shock on account of extensive burns. He has supported his evidence by producing postmortem notes at Exh.13. In the postmortem notes, following injuries have been noted by this witness as external injuries :-

(i) Only post part of skull bone without any brain matter was found.

(ii) The whole part of face, chest and abdomen were burnt and chewed.

(iii) Only 4" x 5" length of small intestine was present in burnt and chewed state.

So far as internal injuries are concerned, they have been stated to be;

(i) The whole scalp in post part that is some parietal with occipital region seen with white colour empty. No any material inside scalp.
(ii) Skull bone over occipital region seen with no material in bone inside.
(iii) No brain substance is found.

In the opinion regarding the cause of death it is mentioned, "Probable cause of death is shock due to extensive burns."

Over and above the medical evidence, there is also inquest panchnama at Exh.34 and the evidence of Shaliyabhai Bhailabhai Rathva,PW.9 Exh.33, which indicate that Bai Ditli had died on account of extensive burns. Thus, the prosecution has been able to prove that the deceased Bai Ditli had died a homicidal death.

13. So far as injuries suffered by complainant Jaliyabhai are concerned, they have been proved by the evidence of Dr. Rajendra Upadhyaya, who had examined him on 24th February, 1993 at about 8.30 A.M. On examination, he had found two injuries, viz. (i) sharp edged lacerated incised wound of 4" x 1" x muscle deep present over left leg. Lateral aspect below knee; (ii) Incised wound of 2" x 1/2" x skin deep present over back of chest (Rt.) side. He referred the patient for his x'ray being taken. The said medical certificate is produced on record at Exh.15. On the very same day, X'ray of injured Jaliyabhai was taken, but no fracture was detected. The prosecution has by leading this medical evidence has proved two facts viz. (i) homicidal death of Bai Ditli, and (ii) injuries sustained by complainant Jaliyabhai. As already discussed above, the prosecution has proved that it was the appellant who was responsible for causing injuries to Jaliyabhai and also causing death of Bai Ditli. We, therefore, conclude that the findings recorded by the Trial Court on these counts, are proper and they are not required to be disturbed.

14. So far as the offence of arson is concerned, the evidence of the aforesaid eye witnesses clearly shows that it was the appellant who had set the house on fire and that part of the evidence of the witnesses has not been shaken at all by the defence. The prosecution has, therefore, amply proved that it was the appellant who was responsible for setting the dwelling house of the complainant on fire and completely destroying it along with household articles and grains worth Rs.47,000/-.

15. We may now turn our attention to the submissions

made by the learned counsel for the appellant to the effect that the appellant had suffered serious injuries and the prosecution witnesses had not explained how these injuries were caused to the appellant and, therefore, the prosecution must fail on that sole ground. By reverting back to the evidence of Dr. Rajendrakumar Upadhyaya and also looking to the medical certificate at Exh.19, it becomes clear that the appellant had suffered three injuries, which in the opinion of Dr. Rajendrakumar could be caused by sharp object and it would take about 15 days to heal,if no complication occurred. The evidence of eye witnesses to the incident does not disclose how the appellant came to receive these injuries, though several suggestions were put to them by the defence. However, considering the settled position of law in this behalf, the prosecution can only fail if it is proved that the injuries on the person of the accused were of serious nature and secondly, that these injuries were received by the accused during the course of the same transaction. In the instant case, looking to the medical evidence, it can be said that the injuries received by the appellant were somewhat of serious nature, but there is nothing on record to show that the appellant had received the said injuries during the course of the incident which took place at about 7.00 P.M. on 23rd February, 1993 infront of the house of the complainant Jaliyabhai at village Alsipura. In light of that, we are of the opinion that non-explanation of the injuries on the appellant by the prosecution witnesses does not adversely affect the case of the prosecution and by no stretch of imagination, it can be said that the said infirmity is fatal to the prosecution.

16. The second limb of submission on this aspect advanced by Mr. Supehia is that since the appellant had suffered serious injuries, the possibility of the complainant having attacked the appellant at first instance and the appellant having caused injuries to the complainant in exercise of his defence cannot be ruled out. We do not find any merit in this submission because the evidence of the eye witnesses discussed above clearly shows that it was the appellant who had entertained a grudge against the appellant and his mother and on the day of incident, he had some altercation with old lady Bai Ditli and after going away, he returned within short time with paliya and without uttering a word, he assaulted the complainant who was standing infront of his house and caused him injuries on the back as well as left leg just behind/below the knee. The suggestion put by the defence to the witness that it was the complainant who was holding the paliya and the appellant had snatched

away that paliya from the appellant has been flatly denied by the witness. There is nothing in the evidence of this witness which would even slightly give an indication to the effect that it was the complainant who had first assaulted the appellant. In this set of evidence, it is difficult to accept the submission of Mr. Supehia.

17. The last contention of Mr. Supehia that there is nothing in the evidence to show that the appellant had known that Bai Ditli was inside the house when he set fire to the house. However, on the foregoing discussion of evidence of the eye witnesses, we have come to the conclusion that the appellant had full knowledge that Bai Ditli was inside the house and that was the precise reason why he set fire to the house. In other words, in our opinion, the prosecution has amply proved that the appellant had with a view to do away Bai Ditli had set the house on fire and he had prevented the persons gathered there from rescuing her.

18. To sum-up, we find that the prosecution has proved beyond any reasonable doubt that Bai Ditli had died a homicidal death and that it was the appellant who had caused the same by setting the house on fire. We also conclude that the appellant had caused injuries with a deadly weapon to the complainant Jaliyabhai on 23rd February, 1993. We also conclude that the prosecution has been able to prove beyond any reasonable doubt that the appellant had destroyed the dwelling house of the complainant along with household articles and grains worth Rs. 47,000/-. We, therefore, find that the conviction recorded by the learned Trial Judge under sections 302, 324 & 436 of the Indian Penal Code is just and requires no interference by this Court. The appeal has no merits and, therefore, it deserves to be dismissed.

The appeal is, therefore, ordered to be dismissed. Muddamal to be disposed of in terms of directions given in the impugned judgment by the learned Trial Judge.

(J.M.Panchal,J.)

(A.H.Mehta, J.)

(patel)